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BOC changes over end users between interexchange carriers, an activity that requires a similar software change.<sup>43</sup> Without such comparative performance data, there is simply no way to determine whether the access provided to CLECs is equivalent to the access that BellSouth provides to itself.

28. Notwithstanding the Commission's clear statements about the need for comparative performance data for the provisioning and maintenance of unbundled network elements, BellSouth makes no attempt to provide any such comparative data. Instead, BellSouth takes the position that "In the case of UNEs, the data will reflect only the CLEC activity, since BellSouth does not provide unbundled elements to itself."<sup>44</sup> Consistent with this position, BellSouth's performance data for its provisioning and maintenance of unbundled loops to CLECs contains no comparative data for BellSouth's performance of the same or analogous functions for itself, asserting simply that "no direct comparison to [BellSouth] services is possible."<sup>45</sup> Further, in accordance with BellSouth's position that it is not required

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<sup>43</sup> See *Ameritech Michigan Order*, ¶ 141; *Local Competition Order*, ¶ 421 ("we require incumbent LECs to switch over customers for local service in the same interval as LECs currently switch end users between interexchange carriers"); 47 C.F.R. § 51.319(c)(1)(ii).

<sup>44</sup> BellSouth Brief, p. 57.

<sup>45</sup> Stacy PM Aff., ¶ 26 & Ex. WNS-3. See also Stacy PM Aff., ¶ 34 & Ex. WNS-6 (acknowledging that BellSouth has not provided comparative performance data for UNE measurements or for firm order confirmation, reject/error notice, or average answer time measures).

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to provide "UNEs on a pre-combined basis or as a 'platform,'"<sup>46</sup> BellSouth does not offer any performance measurements to monitor and report on its performance in provisioning combinations of unbundled network elements, such as the unbundled platform which is an important mode of entry into the local market for AT&T.

29. In lieu of providing actual comparative data on BellSouth's performance of the same or analogous functions for itself, BellSouth presents a set of UNE target installation intervals which it states "will be used to establish the provisioning . . . due dates for the UNE categories."<sup>47</sup> These are the same UNE target installation intervals that BellSouth unilaterally announced in June 1997, and which AT&T evaluated and rejected as wholly "unacceptable" on June 30, 1997.<sup>48</sup> Moreover, BellSouth has informed AT&T that its proposed UNE installation intervals are based on the assumption that UNE elements will be

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<sup>46</sup> BellSouth Brief, p. 29.

<sup>47</sup> Stacy PM Aff., ¶ 36 & Ex. WNS-7. BellSouth also submits a "recently finalized" set of UNE maintenance target intervals. *See id.*, Ex. WNS-7A.

<sup>48</sup> *See* Letter from Becky Bennett, AT&T, to Terrie Hudson, BellSouth, dated June 30, 1997, with AT&T proposed UNE installation intervals noted on attached Letter from J.M. Baker, BellSouth, to All CLECs, dated June 1, 1997 (Attachment 2). In accordance with the requirement of their contract that the parties attempt to reach agreement on appropriate UNE provisioning intervals, AT&T submitted a complete set of AT&T's proposed UNE provisioning intervals to BellSouth on July 9, 1997, and that issue was discussed, but not resolved, between the parties at a meeting held on August 5, 1997. *See* AT&T-BellSouth Agreement, Attachment 12, p. 3 (attached to Stacy PM Aff. as Ex. WNS-4); Letter from Becky Bennett, AT&T, to Terrie Hudson, BellSouth, dated July 9, 1997 (Attachment 3).

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ordered by CLECs only for use with a CLEC's own switch. Moreover, they assume that the component parts will *always* involve design work by BellSouth, and they make no distinction between work involving dispatch and work requiring only central office software or billing database changes.<sup>49</sup> Each of these assumptions is invalid since UNEs can also be ordered for use with BellSouth's switches, and no design work or dispatch should be required with many UNEs. Furthermore, BellSouth has stated that it will make no changes in its announced UNE provisioning intervals until the market for UNEs is more fully developed.<sup>50</sup> In these circumstances, BellSouth's UNE provisioning intervals should be recognized for what they are -- *proposed* provisioning intervals based on obviously incorrect assumptions that are highly disadvantageous to CLECs. Those proposed provisioning intervals are no substitute for actual data on BellSouth's performance of analogous provisioning functions for itself.

C. Service Order And Provisioning Accuracy

30. As part of the process of determining whether the petitioning BOC has complied with its nondiscrimination duties, the Commission has also stated that BOCs should present performance data on "service order accuracy" and "provisioning accuracy" as part of

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<sup>49</sup> See Letter from Becky Bennett, AT&T, to Gary Romanick, BellSouth, dated August 5, 1997 (Attachment 4).

<sup>50</sup> *Id.*

any application under Section 271.<sup>51</sup> Parity in this area is critical because end users will attribute any inaccuracies in the provisioning of their orders by BellSouth to the CLEC. It is essential, therefore, that BellSouth's error rate for CLEC-initiated orders be no greater than its error rate for its own orders. To make this determination, a comparison should be made between the original order sent to BellSouth by the CLEC and the account profile following completion of the order. If BellSouth provides a completion notice to the CLEC with sufficient information, the completion notice can be compared to the order. If the actions requested on the order are the same as the actions specified on the completion notice, the order has been completed without error. This measure permits an assessment to be made of BellSouth's accuracy in processing and provisioning CLEC service orders, which can then be compared to BellSouth's performance in provisioning its own orders.

31. Despite the Commission's specific request for this information, BellSouth has provided no measure comparing the order as submitted by the CLEC with the order actually completed by BellSouth.

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<sup>51</sup> See *Ameritech Michigan Order*, ¶ 212. The AT&T-BellSouth Agreement also identifies "service orders provisioned as requested" as one of the provisioning measurements that BellSouth agreed to make under the contract. See AT&T-BellSouth Agreement, Attachment 12, Sec. 2.6. It further states that "BellSouth and AT&T agree to review appropriate information and develop a proposal to provide this measurement no later than August 1, 1997." *Id.* Although AT&T submitted the proposed service order accuracy measurements developed by the Local Competition Users Group to BellSouth, the parties have not yet reached agreement on how BellSouth will implement that measure.

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32. The other measures provided by BellSouth are inadequate to measure the accuracy and completeness of BellSouth's provisioning of CLEC orders. Although BellSouth's measure of the percentage of installations on which trouble is reported within 30 days of installation may possibly be indirectly related to provisioning accuracy, there are a host of other reasons for new service failures that are wholly unrelated to provisioning accuracy. On the other hand, a wrong feature installed correctly does not necessarily generate a customer trouble report within 30 days. The same is true where a feature is not installed at all. Instead, these situations may result in a call to the CLEC business office and the issuance of a new order to rectify the situation. Although both of these inaccurate order processing problems would be likely to generate significant customer dissatisfaction with the CLEC, neither would be reflected in the performance measurements provided by BellSouth.<sup>52</sup>

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<sup>52</sup> In its *Bell Atlantic/NYNEX Order*, the Commission also required the companies to monitor and report the percentage of order rejections caused by BOC error or omission. *See Bell Atlantic/NYNEX Order*, App. D, Measure 5. There should be minimal rejections caused by BellSouth errors. Although BellSouth provides no data on order rejections, in his testimony on "order flow through," Mr. Stacy asserts that "in July and August CLECs caused errors represented 50% and 87% of the total errors respectively." Stacy OSS Aff., ¶ 111. Mr. Stacy provides no factual basis for this assertion other than "BST analysis." Taking his claim at face value, however, this means that 50% and 13% of the total errors in July and August respectively were caused by BellSouth errors -- a substantial number of errors in light of Mr. Stacy's further claim that approximately 65% of CLEC orders contained errors in both months. *See* Stacy OSS Aff., Ex. WNS-41. Mr. Stacy further states that BellSouth will continue to make changes to its systems "until the error rate improves to more acceptable levels" (Stacy OSS Aff., ¶ 111), thereby implicitly acknowledging that BellSouth's error rate is not presently acceptable.

**D. Held Orders**

33. BellSouth has also failed to provide any data regarding its performance with respect to "held orders," another performance measurement specifically requested by the Commission in its *Ameritech Michigan Order*.<sup>53</sup> The held order interval measure compares the average delay beyond the committed due date for CLEC orders that have not been completed at the close of the reporting period with the average delay beyond the committed due date for BellSouth orders. Additional held order measures provide the percentage of orders held for more than 15 days and more than 90 days, both of which can be computed using subsets of the data used to compute the average held order interval. By comparing the results for CLECs and BellSouth, the held order measure provides an important indication of whether or not CLECs are being discriminated against by a lack of capacity committed to the processing and provisioning of CLEC orders.<sup>54</sup>

34. Despite the Commission's clear statements about the need for held order data, BellSouth has not provided any such held order performance data with its application.

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<sup>53</sup> See *Ameritech Michigan Order*, ¶ 212.

<sup>54</sup> See also Friduss Aff. (DOJ), p. 29 ("Held Orders . . . is an important measure in determining whether [the BOC] prioritizes new facility work on a nondiscriminatory basis"). "Held orders" is not the same as due date commitments not met. Rather, the "held orders" measure focuses on the length of time required for the provisioning of CLEC orders held beyond the due date, not just the fact that BellSouth failed to meet the due date.

**E. Timeliness Of Firm Order Confirmations**

35. The Commission has made clear that parity requires that information regarding order status, such as firm order confirmations ("FOCs"), order rejections, jeopardy notices, and service order completion notices, must be made available to CLECs as quickly as such order status information is available to BellSouth's own customer service representatives. For example, in its *Bell Atlantic/NYNEX Order* the Commission required the merged entity to monitor and report its average order confirmation time, average time for order rejection notification, and average time for order completion notification.<sup>55</sup> Similarly, in its *Ameritech Michigan Order* the Commission relied upon data showing Ameritech's failure to provide timely firm order confirmations and order rejections to CLECs in rejecting Ameritech's application.<sup>56</sup>

36. Customers, and especially business customers, expect their local service provider to closely monitor the status of their orders, to have order status information readily available for them, and to notify them immediately whenever due dates and other commitments are changed. Order confirmations are also required by CLECs before they are able to perform other functions for their customers such as submitting changes to the original order. Unless

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<sup>55</sup> See *Bell Atlantic/NYNEX Order*, App. D, Measures 3, 4 & 6.

<sup>56</sup> See *Ameritech Michigan Order*, ¶¶ 172, 186-188.

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they receive prompt notice of the status of their orders, therefore, CLECs will be disadvantaged in their efforts to compete.

37. Although BellSouth committed itself on May 9, 1997, to measure the time it takes to return FOCs to AT&T under the AT&T-BellSouth Agreement,<sup>57</sup> and BellSouth has been providing limited data in state proceedings regarding its performance in returning FOCs to CLECs since at least mid-July 1997,<sup>58</sup> BellSouth provides no data on its FOC performance to the Commission with its application. Instead, BellSouth represents to the Commission that data regarding its performance in returning firm order confirmations is "not available at this time."<sup>59</sup>

38. Directly contrary to its representation to the Commission, BellSouth delivered performance data for its return of firm order confirmations to AT&T pursuant to the AT&T-BellSouth Agreement on September 14, 1997.<sup>60</sup> That FOC performance data may

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<sup>57</sup> See Stacy PM Aff., ¶ 28; Attachment 12 to AT&T-BellSouth Agreement, p. 4 (attached to Stacy PM Aff. as Ex. WNS-4).

<sup>58</sup> See, e.g., Stacy Rebuttal Testimony, filed July 11, 1997, in *In re Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Georgia Pub. Serv. Comm'n Docket No. 6863-U, p. 7.

<sup>59</sup> Stacy PM Aff., ¶ 43.

<sup>60</sup> See Stacy PM Aff., ¶ 28 ("BellSouth delivered to AT&T the August results on September 14, 1997, for the initial set of agreed to measurements").



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explain why BellSouth now contends that such data does not exist, for BellSouth's data demonstrate quite clearly that equivalent performance is not being provided to CLECs. Thus, BellSouth's own FOC performance data for August 1997 shows that it is returning FOCs to AT&T within 24 hours only 62 percent of the time, and that it is returning FOCs to AT&T within 4 hours only 43 percent of the time.<sup>61</sup> This means that BellSouth is meeting its generous 24-hour minimum contractual performance obligation less than two-thirds of the time.<sup>62</sup>

39. In addition, despite the Commission's request for comparative performance data in its *Ameritech Michigan Order*, BellSouth has failed to report any data on its performance of the same or analogous functions for its own local retail operations -- data that is essential to any determination of parity.<sup>63</sup> Although BellSouth's own agents do not receive firm order confirmations in the same format as CLECs because their orders are not

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<sup>61</sup> BellSouth Firm Order Confirmation data for August 1997 provided to AT&T pursuant to Attachment 12, Section 2 of the AT&T-BellSouth Agreement (attached as Attachment 5).

<sup>62</sup> See also Amendment No. 1, p. 4, to Time Warner-BellSouth Master Interconnection Agreement (attached to Stacy PM Aff. as Ex. WNS-5) (establishing FOC return within 24 hours 95% of the time as BellSouth performance standard).

<sup>63</sup> See *Ameritech Michigan Order*, ¶ 187 ("We are troubled by Ameritech's failure to submit comparative data indicating how long it takes Ameritech to receive the equivalent of a FOC for its own orders"), ¶ 212 (BOC "should provide, as part of a subsequent section 271 application, . . . comparative performance data . . . [to] permit comparisons with [the BOC's] retail operations").

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submitted through the same interfaces, they do receive the same information about the status of their orders from BellSouth's systems. In order to establish that parity is being provided to CLECs, therefore, BellSouth must also measure and report on the length of time that it takes for BellSouth's service order processing systems to return the same order status information to BellSouth's own customer service representatives. Without that comparative information, no determination regarding parity can be made.

40. Furthermore, while a 24-hour target interval may be an appropriate minimum performance requirement for invoking the remedial provisions of a contract, it clearly does not measure parity of performance. BellSouth's own retail representatives should receive order confirmation (or rejection) information from BellSouth's systems within seconds of their submission of an order.<sup>64</sup> As a result, BellSouth's own representatives can confirm orders with the customer, or change the order to avoid rejection, while the customer is still on the line. By contrast, the return of FOCs or reject notices to CLECs an hour or more after a CLEC order was submitted to BellSouth precludes the CLEC from receiving this information while the customer is still on-line, and thus precludes CLECs from providing comparable

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<sup>64</sup> The Commission has stated that "the appropriate retail analogue for a FOC would be the time that elapses between when [a BOC] order is placed into the legacy systems and when the order is recognized as a valid order by the legacy systems." *Ameritech Michigan Order*, ¶ 187 n.479.

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service to their customers. BellSouth's 24-hour contractual performance standard for the return of firm order confirmations to CLECs, therefore, does not provide parity.

41. In addition, the manner in which BellSouth has been measuring its performance for the delivery of FOCs renders any claim that its performance is adequate almost meaningless. Although BellSouth has represented to AT&T that it issued FOCs within 24 hours for 62 percent of AT&T's orders during August, BellSouth's FOC measurements include only those "orders that flow through mechanically and entirely without human intervention."<sup>65</sup> FOCs for orders that are handled in that fully mechanized fashion, however, should be returned to CLECs almost instantaneously, not hours later.<sup>66</sup> A 24-hour performance standard for the return of FOCs only has relevance for CLEC orders that are processed manually. By limiting its FOC measurement to those AT&T orders that are processed by BellSouth without any manual intervention -- a limitation that has no basis anywhere in the AT&T-BellSouth Agreement -- while using a 24-hour target, BellSouth's FOC performance data cannot possibly establish the adequacy of its performance. Indeed, the amazing fact revealed by that data is that for the limited class of orders included in BellSouth's

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<sup>65</sup> Stacy PM Aff., Ex. WNS-8, p. 2. This exhibit to Mr. Stacy's affidavit is *not* a part of the AT&T-BellSouth Agreement and contains a number of statements by BellSouth, including the above description of how BellSouth computes the FOC return interval, to which AT&T has never agreed.

<sup>66</sup> Cf. *Ameritech Michigan Order*, ¶ 188 ("order rejection notices generated electronically . . . should be relatively instantaneous").

measure, BellSouth did not meet its 24-hour target for the return of FOCs to AT&T 100 percent of the time.<sup>67</sup>

**F. Timeliness Of Order Rejections**

42. BellSouth's performance data is also inadequate because BellSouth has withheld its data on the timeliness of its transmission of order rejections to CLECs. Prompt notification of order rejections is essential to enable CLECs to know the status of their orders and to promptly make any changes that may be required for their resubmission to BellSouth. For this reason, the Commission relied on data regarding the lack of timely order rejection notices in rejecting Ameritech's application, and it required that the time for order rejection notification be monitored and reported in its *Bell Atlantic/NYNEX Order*.<sup>68</sup>

43. Notwithstanding the clear need for performance data on the timeliness of order rejection notices and the fact that BellSouth has been collecting and reporting such information to AT&T under the AT&T-BellSouth Agreement,<sup>69</sup> BellSouth again represents to

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<sup>67</sup> BellSouth's FOC measurement also provides a vivid illustration of the importance of full disclosure as to which operational results are included and which are excluded in the computation of each performance measurement. *See* Part IV.C.1, *infra*.

<sup>68</sup> *See Ameritech Michigan Order*, ¶ 188; *Bell Atlantic/NYNEX Order*, App. D, Measure 4.

<sup>69</sup> *See* AT&T-BellSouth Agreement, Attachment 12, p. 5 (attached to Stacy PM Aff. as Ex. WNS-4) (requiring BellSouth to measure the timeliness of its delivery of order rejection notifications by reporting the percentage of "notice of reject or error status within 1 hour of receipt" of the order, including both paper and electronic rejection notices). *See also*

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the Commission that performance data on the timeliness of its "order reject/error" notices is "not available at this time."<sup>70</sup> This contention is simply not true. In fact, BellSouth submitted performance data regarding the timeliness of its notice of "error or reject status" to AT&T pursuant to the AT&T-BellSouth Agreement on September 14, 1997.<sup>71</sup>

44. Moreover, once again the performance data that BellSouth has withheld from the Commission shows conclusively that BellSouth is *not* providing equivalent access to CLECs. This BellSouth data shows that BellSouth is not meeting its contractual performance obligation to provide order rejections to AT&T within one hour of the receipt of AT&T's order 94 percent of the time<sup>72</sup> -- a result that reflects the fact that BellSouth, in violation of its contractual commitments to AT&T, still has not mechanized the process of sending order rejections to CLECs and is continuing to rely instead on the manual notification of such

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<sup>69</sup> (...continued)

Amendment No. 1, p. 4, to Time Warner-BellSouth Master Interconnection Agreement (attached to Stacy PM Aff. as Ex. WNS-5) (establishing 1 hour requirement for order rejection notices as BellSouth performance standard).

<sup>70</sup> Stacy PM Aff., ¶ 16.

<sup>71</sup> BellSouth Error or Reject Status data for August 1997 provided to AT&T pursuant to Attachment 12, Section 2 of the AT&T-BellSouth Agreement (Attachment 6).

<sup>72</sup> *Id.*

rejections.<sup>73</sup> Since BellSouth's own retail representatives should receive electronic order rejection notices "relatively instantaneous[ly]" from BellSouth's systems,<sup>74</sup> BellSouth's failure to meet even its one-hour contractual obligation -- a performance standard specifically established to apply to BellSouth's manual notification procedures<sup>75</sup> -- constitutes a clear failure to provide adequate performance for CLECs.

**G. Timeliness Of Order Completion Notification**

45. BellSouth's performance measurements are also deficient because BellSouth has provided no measure of timeliness for the return of service order completion notices to CLECs. This is a crucial deficiency. Once an order has been completed by BellSouth, an electronic feed should return a service order completion notice to the CLEC within minutes. Any delay in the return of service order completion notices has serious

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<sup>73</sup> As discussed in more detail in the Affidavit of Jay Bradbury of AT&T, BellSouth -- in violation of its contractual commitment to AT&T to provide AT&T with on-line information exchange for service order errors and rejections "no later than March 31, 1997" (AT&T-BellSouth Agreement, Section 28.6.4) -- still has not programmed its systems to provide electronically generated order rejection notices to CLECs.

<sup>74</sup> *Ameritech Michigan Order*, ¶ 188. BellSouth's failure to provide any actual comparative performance data regarding the average length of time it takes for its systems to notify BellSouth's own personnel that an order has been rejected constitutes an additional reason why BellSouth has failed to meet its burden of demonstrating that parity is being provided to CLECs. *See id.*, ¶¶ 139-140, 212.

<sup>75</sup> *See* AT&T-BellSouth Agreement, Section 28.6.4.1 (establishing 1 hour performance standard for service order rejection notices "until this [electronic notice] capability is available").

consequences for AT&T's ability to provide local service to its customers. Until AT&T receives a service order completion notice, it does not know that the customer is in service, and it is unable to begin billing the customer for service or to address any maintenance problems experienced by the customer. Thus, as the Commission recognized in requiring performance data on the average time for service order completion notifications in its *Bell Atlantic/NYNEX Merger Order*, prompt order completion notifications are an essential part of nondiscriminatory performance.<sup>76</sup>

**H. Bill Timeliness, Quality And Accuracy**

46. Notwithstanding the fact that the Commission has requested BOCs to submit comparative performance data for billing timeliness, quality and accuracy,<sup>77</sup> and that BellSouth is also obligated under its contract with AT&T to monitor and report such billing data,<sup>78</sup> BellSouth has failed to submit any such billing performance data to the Commission with its application in this case.

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<sup>76</sup> See *Bell Atlantic/NYNEX Order*, App. D, Measure 6.

<sup>77</sup> See, e.g., *Ameritech Michigan Order*, ¶¶ 212, 221, 140; *Bell Atlantic/NYNEX Order*, App. D, Measures 21 & 22.

<sup>78</sup> See AT&T-BellSouth Agreement, Attachment 12, pp. 6-8 (attached to Stacy PM Aff. as Ex. WNS-4) (requiring BellSouth to monitor and report the timeliness, accuracy and completeness of recorded usage billing data sent to AT&T).

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47. Furthermore, the fact is that AT&T has experienced a number of problems with the billing information provided by BellSouth, including repeated and significant errors in the recorded usage data provided by BellSouth.<sup>79</sup> AT&T's experience, therefore, squarely refutes any claim by BellSouth that it is providing parity of performance to CLECs with respect to billing matters.

**I. Additional Performance Measures Omitted From BellSouth's Application**

48. In addition to those performance measures specifically identified by the Commission in its recent orders, there are a number of other measures that BellSouth needs to report in order to establish that it is providing nondiscriminatory access to CLECs.

49. **Operator Services And Directory Assistance:** For both operator services and directory assistance calls where those services are provided by BellSouth, BellSouth should report its average speed to answer measured from the initiation of ringing

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<sup>79</sup> See, e.g., Letter from Rebecca Bennett, AT&T, to Gary Romanick, BellSouth, dated September 19, 1997 (Attachment 7). Although BellSouth represented to AT&T in its September 14, 1997 submission of performance data under the AT&T-BellSouth Agreement that the recorded usage data delivered to AT&T in August 1997 was 100 percent accurate, BellSouth apparently made that claim by simply equating passing the internal edits established by BellSouth with perfect performance without regard to the errors subsequently identified by AT&T in usage data which had to be returned to BellSouth. See *id.*



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until the customer's call is answered.<sup>80</sup> BellSouth provides no performance information for either of these services.

50. **Jeopardies:** In order to ensure that CLECs receive timely notice of jeopardy situations when BellSouth determines that it will be unable to complete an order on the committed due date, BellSouth should measure and report the average length of its jeopardy notice interval (*i.e.*, the time remaining prior to the committed due date) for both CLECs and its own retail operations so that CLECs will be able to give timely notice to their customers that the original due date will not be met.<sup>81</sup> Similarly, in order to gauge whether BellSouth's commitments to CLECs are as reliable as its commitments to its own retail operations, comparative data should be provided on the percentage of total orders processed that are jeopardized during the reporting period. BellSouth offers no performance measurements at all relating to jeopardies.

51. **Responsiveness To CLEC Calls:** Although Mr. Stacy states that BellSouth has established two "Local Carrier Service Centers" in Birmingham and Atlanta to

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<sup>80</sup> See, e.g., *Ameritech Michigan Order*, ¶ 164 n.410 (stating that Ameritech provided a measure of "speed to answer for operator services" with its application); Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 2.

<sup>81</sup> See Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 1.

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provide service to CLECs,<sup>82</sup> BellSouth's performance data pertaining to the responsiveness of BellSouth's personnel to calls from CLECs does not establish that parity is being provided to CLECs. While BellSouth purports to report the percentage of maintenance calls answered within 30 seconds for unbundled loops and local interconnection trunking for CLECs and BellSouth,<sup>83</sup> it is apparent from the numbers submitted by Mr. Stacy that only some overall average performance figure for both CLECs and BellSouth is actually being reported. Thus, for each month BellSouth reports precisely the same percentage of calls answered in 30 seconds for both CLECs and BellSouth, both for South Carolina and for the BellSouth region,

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<sup>82</sup> See Stacy PM Aff., ¶ 4.

<sup>83</sup> See Stacy PM Aff., Ex. WNS-3 (unbundled loops report) & WNS-2 (local interconnection trunking report). Although BellSouth has also been measuring "the average length of time it takes for the BellSouth repair bureau attendant to answer the telephone" under the AT&T-BellSouth Agreement (see AT&T-BellSouth Agreement, Attachment 12, p. 6 (Stacy PM Aff., Ex. WNS-4)), BellSouth does not report this data or other average answer time data for resale services.

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for both loops and trunks.<sup>84</sup> Further, BellSouth provides no data regarding call abandonment rates for calls to its Local Carrier Service Centers.<sup>85</sup>

52. **Network Performance:** In order to establish that network performance parity is being provided to CLECs, BellSouth should also measure and report comparative performance data for such network performance measures as transmission quality, speed of connection, call completion rate, and call blockage.<sup>86</sup> In its *Ameritech Michigan Order*, for example, Commission stated that BOCs should provide comparative performance data for trunk blockage and call completion rates,<sup>87</sup> and in its *Bell Atlantic/NYNEX Order*, the Commission specifically recognized the need for data on trunk blockage.<sup>88</sup> Although BellSouth has provided some trunk blockage information, it has not submitted any other network performance data with its application.

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<sup>84</sup> Compare Stacy PM Aff., Ex. WNS-2 with Stacy PM Aff., Ex. WNS-3. As discussed in Part IV.B of this affidavit, BellSouth's speed of answer data is also deficient for the further reason that BellSouth reports its performance solely in terms of the percentage of calls answered within a 30 second target interval instead of providing a direct comparison of its average speed of answer for CLECs and for itself. This form of reporting is inappropriate because it can mask discriminatory behavior. See *Ameritech Michigan Order*, ¶¶ 166, 168, 211 n.542, 234.

<sup>85</sup> See Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 2.

<sup>86</sup> See Local Competition Users Group Parity of Performance Measures, Attachment 1, p. 2.

<sup>87</sup> See *Ameritech Michigan Order*, ¶¶ 224-245, 255.

<sup>88</sup> See *Bell Atlantic/NYNEX Order*, App. D, Measures 19 & 20.

53. Systems Availability, Response Times, And Order Flow Through:

Finally, although BellSouth provides some very limited data regarding OSS systems availability, response time intervals for certain pre-ordering functions, and order flow through rates as attachments to Mr. Stacy's OSS affidavit,<sup>89</sup> there does not appear to be any commitment by BellSouth to provide this performance data on an ongoing basis, and its inclusion in Mr. Stacy's OSS affidavit rather than in his affidavit dealing with performance measurements strongly suggests that BellSouth does not regard these measures as part of its so-called "permanent" measurement plan.<sup>90</sup> Each of these measures is important to far more than the present operational readiness of BellSouth's OSS interfaces and systems to handle CLEC orders on a nondiscriminatory basis. They are also vital to any determination as to whether BellSouth is keeping its local markets open to competition in the future by providing parity of performance to CLECs on an ongoing basis. Accordingly, BellSouth should be required to add each of these performance measures to its list of regularly monitored and reported performance measurements.

54. The data provided by BellSouth for each of these three measures also suffers from other deficiencies. For example, the data on "availability" appears to be primarily a list of the *scheduled* hours of availability for certain of BellSouth's OSS interfaces

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<sup>89</sup> See Stacy OSS Aff., ¶¶ 108-109, 111 & Exs. WNS-36, WNS-37 & WNS-41.

<sup>90</sup> See Stacy PM Aff., ¶¶ 16, 42.

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and "key" legacy systems, and what little data is provided on actual availability for August 1997 is presented wholly without any supporting information about what was measured or how the data was obtained.<sup>91</sup> Similarly, BellSouth's data on both pre-ordering "response times" and "order flow through" are based on special studies or tests used by BellSouth to collect or "adjust" its data, and no meaningful information regarding those studies is provided with BellSouth's application that would permit the Commission or other parties to evaluate the appropriateness or reasonableness of those studies.<sup>92</sup> In short, BellSouth has not submitted sufficient information about these measurements with its application to enable the Commission to find that BellSouth has met its burden of establishing that it is delivering nondiscriminatory access to BellSouth's systems, services and facilities to CLECs.

**IV. THE PERFORMANCE DATA PROVIDED BY BELL SOUTH DOES NOT ESTABLISH THAT BELL SOUTH IS PROVIDING NONDISCRIMINATORY PERFORMANCE FOR CLECS.**

55. In addition to the many gaps in the performance data submitted by BellSouth, BellSouth's performance reports suffer from a number of further problems which preclude reliance on those reports as a means of establishing that BellSouth is providing nondiscriminatory performance for CLECs. Thus, in the few instances where BellSouth

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<sup>91</sup> See Stacy OSS Aff., ¶ 108 & Ex. WNS-36.

<sup>92</sup> These problems are discussed in more detail in Part IV.C.1. of my affidavit dealing with the lack of clarity in the measurements reported by BellSouth.

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purports to provide comparative performance data, it has presented its data in ways which preclude valid comparisons between BellSouth's performance for CLECs and its performance for itself. Moreover, BellSouth has failed to provide adequate information about how its measurements were made and about certain special studies and analyses which it uses to "adjust" its performance data in order to make its performance look better.

**A. BellSouth's Statistical Process Control Charts Do Not Establish That BellSouth Is Providing Nondiscriminatory Performance For CLECs.**

56. In the few instances where BellSouth provides actual data comparing its performance for CLECs with its performance for itself -- namely, seven resale provisioning and maintenance measures and four interconnection trunking measures -- BellSouth attempts to use "statistical process control" charts to create a "safe harbor" within which its conduct would be regarded as nondiscriminatory.<sup>93</sup> In fact, however, BellSouth's statistical process control charts do not establish that nondiscriminatory performance is being delivered to CLECs.<sup>94</sup>

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<sup>93</sup> See Stacy PM Aff., ¶¶ 30-31 & Ex. WNS-9. These are the same measurements presented in Exhibits WNS-1 and WNS-2. As Mr. Stacy states, the seven resale measurements reported in this fashion are all measures which BellSouth has historically used to manage its performance for its own end-user customers. *Id.*, ¶ 19.

<sup>94</sup> In prior testimony before state commissions, Mr. Stacy has claimed that AT&T agreed to the use of statistical process control as a way to measure BellSouth's performance under the AT&T-BellSouth Agreement. That is not correct. AT&T has never agreed to BellSouth's "proposed" (Stacy PM Aff., ¶ 30) use of statistical process control to measure performance under the contract or for any other purpose. See Letter from G.R. Follensbee, AT&T, to Jerry D. Hendrix, BellSouth, dated July 30, 1997, p. 2 (claim that AT&T agreed to the use of  
(continued...)

57. For the eleven measurements, BellSouth calculates its mean or average level of performance for its own operations for each of seven months and a standard deviation over the same seven month period.<sup>95</sup> These results are then used as a baseline for evaluating its performance for CLECs. BellSouth does this by calculating upper and lower "control limits," which it sets at three standard deviations above and below its own average performance. BellSouth's mean performance for itself and the upper and lower control limits are plotted on a control chart. BellSouth then superimposes on the same chart its mean monthly performance for each of the seven months both for CLECs and for itself. BellSouth

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<sup>94</sup> (...continued)

statistical process control "is incorrect") (Attachment 8). Furthermore, the AT&T-BellSouth Agreement provides that "[t]he data shall be reported to AT&T in a mutually agreed upon format which will enable AT&T to compare BellSouth's performance for itself with respect to a specific measure to BellSouth's performance for AT&T for that same specific measure" (AT&T-BellSouth Agreement, Attachment 12, Sec. 1.2), and BellSouth's proposed "statistical process control" charts do not meet this contractual requirement.

<sup>95</sup> BellSouth does not explain the derivation of the numbers in its control charts in detail, but it appears that the "standard deviation" computed by BellSouth reflects simply the variability of the 7 reported monthly average results around the overall mean, rather than the variability of BellSouth's performance within each month. This is an important distinction. It is the variance of performance within each month, not the variability of the average results from month to month, that should be used both to develop statistical process control charts and to evaluate discrimination.

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contends that its control limits (that is, a six standard deviation envelope centered around the mean) define a range of performance that should be regarded as nondiscriminatory.<sup>96</sup>

58. BellSouth's statistical process control charts are inadequate either to identify discrimination against CLECs or to protect emerging competition in BellSouth's local markets. First, there is no generally recognized statistical theory or methodology for the application of statistical process control techniques to identify discrimination. Statistical process control is designed to improve the quality of a firm's performance by reducing variability in output. It is not designed to detect discrimination, and it is premised on the existence of a number of assumptions that have not been shown to be present here. Second, even if it could appropriately be applied to identify discrimination, BellSouth has so broadly defined its upper and lower control limits as to render them wholly inadequate to detect discriminatory performance by BellSouth. Notwithstanding the one-sided assumptions used by BellSouth in its statistical process control charts, however, those charts do not support BellSouth's claim that nondiscriminatory performance is being provided to CLECs. Quite the contrary, those charts actually demonstrate that CLECs are *not* obtaining equivalent performance from BellSouth.

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<sup>96</sup> See, e.g., Stacy PM Aff., ¶ 32 ("as long as the monthly performance is within the established upper and lower limits there generally would not be any concern").



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1. **Statistical Process Control Is Not Designed To Detect Discrimination.**

59. Statistical process control is intended to monitor, based on appropriate sampling techniques, whether a process that transforms inputs into outputs, such as a manufacturing operation, is operating within expected boundaries. Those expected boundaries or control limits are established on the basis of previously observed, historical averages and variations in performance. In order to provide meaningful results, the process being monitored must be "in control" or operating in a stable manner; the populations being sampled each month must be the same; and there must be no changes in the variability of performance from month to month.

60. There is no authority for applying statistical process control to the problem of determining whether or not BellSouth is discriminating against CLECs, and that methodology is unsuitable for several reasons. First, unlike the manufacturing quality control applications for which statistical process control was developed, the discrimination issue to be addressed here requires a comparison of two processes -- BellSouth's performance for itself and its performance for CLECs -- which may or may not be the same. Whether these two processes are delivering the same level of performance is the question to be demonstrated. It cannot simply be assumed. Second, statistical process control is designed to compare a firm's present performance to its past performance, whereas the relevant comparison here is between BellSouth's present performance for CLECs and its present performance for itself. Third,